

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
Petition for Waiver of Embarq Local	)	WC Docket No. 08-160
Operating Companies of Sections 61.3 and	)	
61.44-61.48 of the Commission's Rules, and	)	
Any Associated Rules Necessary to Permit	)	
It to Unify Switched Access Charges	)	
Between Interstate and Intrastate	)	
Jurisdictions	)	

**COMMENTS OF SPRINT NEXTEL CORPORATION**

Sprint Nextel Corporation (Sprint Nextel), pursuant to the Public Notice released August 5, 2008 (DA 08-1846), hereby respectfully submits its comments on the above-captioned petition for waiver of the Embarq Local Operating Companies. In this petition, Embarq has requested waiver of various federal rules to enable it to unify its interstate and intrastate access rates within each of its local operating company study areas. In 18 of its 21 study areas, Embarq's interstate rates would increase, in some cases by several orders of magnitude. Embarq's interstate weighted average traffic sensitive rate would *double*, from \$.0067 to \$.0134, under its "Interim Access Unification Proposal."

Embarq's petition is a cynical attempt to shop for a sympathetic forum, and should be rejected. State commissions have recently begun to examine and reduce Embarq's intrastate switched access rates, so Embarq has come to this Commission for permission to shift revenue from the intrastate to the interstate jurisdiction. However, Embarq's petition is tellingly silent on the cost basis for any such shift of cost recovery between the jurisdictions, because there simply is none.

Embarq's proposal also is based on several faulty premises: first, that the existing access charge regime is rational and worthy of being propped up; second, that Embarq's intrastate rates are just and reasonable, and that it is entitled to the full revenue stream associated with those rates; and third, that it is appropriate to shift the burden of intrastate cost recovery onto carriers that utilize Embarq's interstate access services. As demonstrated below, none of these assumptions has merit. Grant of Embarq's petition is a step backward, away from rational reform; unreasonably burdens interstate access customers; will stimulate traffic pumping; and is otherwise contrary to the public interest. For these reasons, the Commission should deny Embarq's petition.

**I. THE EXISTING ACCESS CHARGE REGIME SHOULD NOT BE PROPPED UP, BUT INSTEAD ELIMINATED IN FAVOR OF EFFICIENT BILL-AND-KEEP TRAFFIC EXCHANGE ARRANGEMENTS.**

In its petition, Embarq states (p. 11) that switched access revenue was and continues to be "a critical and integral part of the overall compensation system that has ensured investment in local network infrastructure," and that "[d]ramatic shifts in compensation, technology, competition, and universal service support...have created challenges that increasingly undermine the switched access charge mechanism's ability to fulfill its critically important function of ensuring economic investment, supporting a vital network, and providing universal service." Rather than addressing these "dramatic shifts" directly by moving in the direction of rational economic and pro-competitive reform, however, Embarq here urges the Commission to continue to prop up the antiquated access charge regime. Indeed, Embarq proposes to exacerbate the problem by migrating intrastate irrationalities into the interstate jurisdiction. This "finger in the dike"

approach might, if granted, temporarily insulate Embarq from some of the vicissitudes of competition and technological change, but only at the expense of interexchange and wireless customers. Its proposal will ultimately be ineffective and is, as discussed below, anti-competitive and otherwise harmful to the public interest.

There can be no dispute that the existing access charge regime is broken and is the underlying cause of problems such as regulatory arbitrage, traffic pumping, incorrect jurisdictional traffic reporting, and extraordinarily costly back office systems designed to measure, bill, audit, dispute, and litigate intercarrier compensation amounts. Unifying intrastate and interstate access rates as Embarq proposes may place a Band-aid on narrow issues (*e.g.*, improper percent interstate usage (PIU) reporting), but it will worsen other problems (*e.g.*, traffic pumping, which is likely to spread further if interstate rates are increased), and will in no way actually fix the basic problem of irrational cost recovery. Nor will unification of interstate and intrastate access rates address the fact that more and more traffic is being exchanged completely outside the access system: wireless-to-wireless, CLEC-to-CLEC, CLEC-to-wireless, landline-to-wireless interexchange, local ILEC-to-CLEC, and, of course, intra-company exchanges for the LEC-IXC-wireless behemoths.

Sprint Nextel is well aware of the pain associated with a competitive marketplace and rapid technological and regulatory change, having experienced over the years substantial and multiple financial write-downs and lay-offs in its long distance and wireless businesses (which have never had the luxury of a guaranteed rate of return, decades of universal service subsidies, or a position as the monopoly or near-monopoly service provider, let alone the ability to collect access charges, whether interstate or

intrastate) resulting from these environmental forces. However, the efficient and effective way to address the changes about which Embarq complains is to implement a rational intercarrier compensation arrangement such as bill-and-keep, not to prop up the existing broken and increasingly irrelevant access charge regime.

## **II. EMBARQ'S INTRASTATE ACCESS RATES ARE NOT JUST AND REASONABLE, AND EMBARQ IS NOT ENTITLED TO ANY REVENUE GUARANTEE.**

Embarq's Interim Access Unification Proposal presumes that its current intrastate rates are just and reasonable, and that it is somehow entitled to receive the revenues associated with those intrastate rates. Both of these assumptions are without merit.

Embarq's intrastate average traffic sensitive (ATS) rate is as high as \$.0712 (in Missouri), more than *ten times* higher than its interstate equivalent (\$.0065).<sup>1</sup> Its weighted average intrastate ATS is more than *four times* higher than its interstate equivalent (\$.0269 vs. \$.0067; *id.*), and *thirty-eight times* the rate Embarq pays for ISP-bound traffic; it also is far higher than the intrastate access rates charged by the RBOCs. It strains credulity to assert that rates that generate differences of this magnitude, for the same carrier and using the same network, are either cost-based or just and reasonable. To the contrary, there is considerable evidence to suggest that Embarq's intrastate access charges are excessive. For example:

- In Kansas, the Corporation Commission has been asked to re-examine Embarq's intrastate rates. It has been seven years since these rates were last examined and reduced, and Embarq has significant sources of additional revenue now that it did not have seven years ago.<sup>2</sup>

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<sup>1</sup> See Exhibit C of Embarq's petition.

<sup>2</sup> See Petition of Sprint Communications Company L.P., Sprint Spectrum L.P., and Nextel West Corp., d/b/a Sprint, to Conduct General Investigation into the Intrastate Access Charges of United Telephone Company of Kansas, United Telephone Company

*Footnote continued on next page*

- In Virginia, the State Corporation Commission (“SCC”) has granted a Sprint Nextel petition to reduce Embarq’s intrastate switched access rates, and is scheduled to hear the case on September 29, 2008. Previously, the Staff of the SCC had recommended an investigation of Embarq’s intrastate switched access rates,<sup>3</sup> asserting that “the present level of intrastate switched access charges for both [Virginia Embarq entities] do not currently meet an acceptable standard of ‘just and reasonable’...”<sup>4</sup> Embarq’s rates in Virginia have not been examined for seven years and there is no valid basis to permit continuation of its high switched access rates.
- In Minnesota, the Commission is considering a complaint filed by Verizon Business against Embarq regarding Embarq’s excessive intrastate access rates.<sup>5</sup>

Sprint Nextel anticipates that these and other state commissions will find that Embarq’s current intrastate access charges are too high, and will order access rate reductions. Embarq should not be allowed to use its Interim Access Unification Proposal as a means to delay or evade such state-mandated rebalancing/rate adjustments.

Even if one were to accept *arguendo* that Embarq’s intrastate access rates are just and reasonable, there is no basis for assuming that Embarq (or any other local exchange carrier) is somehow entitled to the revenue stream associated with intrastate access rates.

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of Eastern Kansas, United Telephone Company of South Central Kansas, and United Telephone Company of Southeastern Kansas, d/b/a Embarq, Kansas State Corporation Commission Docket No. 08-GIMT-1023-GIT, filed May 16, 2008.

<sup>3</sup> See Comments of Division of Communications on Application of Verizon Virginia Inc., Verizon South Inc., and MCIMetro Access Transmission Services of Virginia, Inc. for Modifications to Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, Case No. PUC-2006-00154, February 23, 2007, p. 39 (“In addition, the Commission should initiate an investigation into the appropriate level of access charges for the Embarq companies (United and Centel). We recommended such action over a year ago in Case No. PUC-2005-00118.”).

<sup>4</sup> See Staff Report, Petition of Sprint Nextel Corporation and LTD Holding Company for Approval of the Transfer of Control of Central Telephone Company of Virginia, United Telephone-Southeast, Inc. and Sprint Payphone Services of Virginia, Inc., from Sprint Nextel Corporation to LTD Holding Company, Case No. PUC-2005-00118, January 6, 2006, page 37.

<sup>5</sup> See Minnesota Docket No. C-07-1198.

Revenue guarantees are an anachronism given current market conditions and the prevailing regulatory structure. If Embarq is correct in asserting that it is subject to increasing competitive pressures, it is surely anti-competitive for the Commission to guarantee the revenues of a single carrier (or class of carriers) at the expense of another class of carriers. And it is certainly contrary to the underlying philosophy of price cap regulation -- a regulatory regime which Embarq voluntarily accepted -- to allow an ILEC to retain all upside potential (earnings in excess of 11.25%, the last authorized interstate rate of return) but to insulate it against any downside risk.

Furthermore, it is highly probable that the type of revenue guarantee that Embarq is seeking here is unnecessary when Embarq's other corporate operations -- such as its provision of special access services, non-regulated broadband Internet access services, and satellite TV services -- are factored into the analysis. Many of these services are provisioned using network facilities that were deployed using universal service support and cash generated by excessive access charges, and are generating extraordinarily profitable returns. For example, as can be seen in Table 1 below, Embarq's rate of return over the past several years on its interstate special access and total interstate services have been remarkable:

Table 1  
Embarq's Earned Rate of Return

	<u>Special access</u>	<u>Total interstate</u>
2001	132%	24%
2002	195	29
2003	232	31
2004	317	36
2005	360	38
2006	382	38
2007	315	32

Source: ARMIS Form 43-01

Given these supracompetitive returns, it is difficult to justify any sort of revenue guarantee.

### III. **SHIFTING INTRASTATE REVENUES TO THE INTERSTATE JURISDICTION IS UNREASONABLE.**

Embarq's concern over the level of its intrastate access rates is well-founded – the rates are indeed excessive and in all but three of its states, greatly exceed interstate levels.<sup>6</sup> Nonetheless, its proposal to shift intrastate revenue into the interstate jurisdiction is improper for several reasons, and its proposal must accordingly be rejected.

First, although Sprint Nextel does not concede that Embarq's interstate access rates appropriately reflect legitimate economic costs, its switched access rates are presumed under the Commission's price cap regulation to be reasonable. If this is so, then Embarq's proposed increase in ATS rates by unspecified tens of millions of dollars will logically result in interstate rates that can no longer be presumed reasonable.

Second, applicable separations rules do not allow the re-allocation of intrastate revenue to the interstate jurisdiction in the manner proposed here by Embarq, and

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<sup>6</sup> See Embarq Exhibit C.

Embarq has made no request for waiver of these separations rules. In any event, the FCC lacks the authority and the resources to perform an intrastate rate case, and thus has no means of even evaluating the costs which Embarq proposes to shift to the federal jurisdiction.

Third, the financial burden of Embarq's proposal falls on the traffic of carriers subject to the proposed increase in interstate switched access, that is, on long distance and wireless carriers and their customers. It is economically irrational to impose costs on entities that do not generate the costs.

By Embarq's own admission (p. 27), its Interim Access Unification Proposal leaves its end-user rates "effectively unchanged." It asserts (p. 23) without any justification that "it is not reasonable or feasible to require [Embarq's] end user customers to pay an even greater share of the cost of carrier-of-last-resort services." Certainly, Embarq presents no evidence that telephone penetration rates in its service territories will be adversely affected if it raised its end user rates; moreover, Embarq ignores the consumer benefits that would flow from overall (interstate as well as intrastate) lower access rates – improved coverage and service, and the possibility of lower rates, for services that today are forced to bear the access charge burden. Embarq does not explain why it is "reasonable or feasible" to require interstate access customers to "pay an even greater share of the cost of carrier-of-last-resort services," nor does it attempt to quantify its "carrier-of-last-resort costs" or to even demonstrate how much of the proposed doubling of its interstate ATS rates is attributable to this subset of intrastate costs. In short, Embarq has fallen far short of the good cause showing necessary for a request for waiver of the Commission's rules, and its request should accordingly be denied.

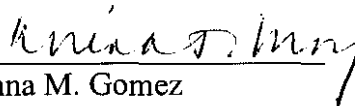


#### IV. CONCLUSION.

The Commission must reject Embarq's Interim Access Unification Proposal. This proposal is based on numerous unfounded assumptions: that the existing access regime should be propped up; that its intrastate access rates are just and reasonable; that Embarq is entitled to a revenue guarantee; and that it is reasonable to shift the intrastate burden on interstate access customers. Because each of these assumptions is incorrect; because the proposal perpetuates an irrational and antiquated access charge regime; because it is anti-competitive; and because it will stimulate abuses such as traffic pumping, Embarq's proposal should be denied.

Respectfully submitted,

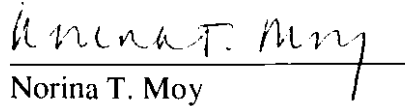
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August 26, 2008

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing comments of Sprint Nextel Corp. was filed electronically or via US Mail on this 26<sup>th</sup> day of August 2008 to the parties listed below.

  
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